IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1392 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT AGRICULTURAL UNIVERSITY

Versus

RAMESHCHADNRA B HIRPARA

Appearance:

1. Special Civil Application No. 1392 of 1988

MR SN SHELAT for Petitioner No. 1

MR HB PAREKH for Respondent No. 1-2,4

NOTICE SERVED for Respondent No. 2,3,5

(MR DH WAGHELA) for Respondent No. 4

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 30/01/2003

ORAL JUDGEMENT

This petition is filed against the award dated 29th July, 1987, passed by the Labour Court, Rajkot in Reference (L.C.R.) Nos.124/86 to 128/86. The petitioner has also prayed for stay against the execution and operation of the stay order.

2) At the time of admission of this petition, this Court has granted ad-interim stay against the execution of the impugned order on condition that the concerned workman would be re-employed by the petitioner-University as fresh recruit within two weeks, if they have not been re-employed by that time.

3) It is the say of the petitioner that the Labour Court has proceeded on assumptions and presumptions and had committed serious errors of law in passing the award. The petitioner has further submitted that the workman having not completed 240 days, the provisions of Section 25-F would not be applicable and that the termination could not be said to be illegal or in violation of the provisions of law. The petitioner has further submitted that since there was no work available with the petitioner, service of the respondents were terminated on the basis of last come first go. The petitioner further submitted that the lower Court has not accepted their contention that the respondents were employed as daily wagers and that one of the respondents have completed 240 days and the provisions of the Industrial Disputes Act were not violated. The petitioner has, therefore, prayed that the order passed by the Labour Court deserves to be quashed and set aside.

3) Heard Mr.Mazgaokar, the learned advocate appearing for the petitioner. Hon'ble Mr.Justice D.H.Waghela, prior to his Lordships' elevation was appearing as an advocate. Thereafter, fresh notice was issued to the respondents and despite service of the notice nobody has appeared on behalf of the respondents. Office endorsement shows that Mr.H.B.Parekh, learned advocate was appearing for the respondents No.1 and 2. However, he was not present when the matter was called out.

4) Mr.Mazgaokar, the learned advocate appearing for the petitioner submits that pursuant to the order passed by the Labour Court on 29-7-1987, the petitioner issued a letter dated 6-2-1988 directing respondents to report to their duties. He has further submitted that out of the five respondents, the respondent No.1 did not report to the duty. The respondent No.3 has reported to his duty. However, he got the job elsewhere on 7-3-1988 and hence

he has voluntarily resigned. As far as the respondent No.2 is concerned, he reported to his duty on 17-2-1988 and therefore, with effect from 22-3-1994 he was appointed as Telephone Operator on ad-hoc basis. He has also given an undertaking on 22-3-1994 that he will not claim any benefits. Mr.Mazgaokar has placed on record the letter of undertaking dated 22-3-1994 and letter dated 10-7-1997. It is apparent from these letters that the respondent No.2 has forgone all his rights. As far as the respondent No.4 is concerned, it is stated that he has reported to his duty on 15-2-1988. However, with effect from 1-2-1989, he has not attended his duties. As far as respondent No.5 is concerned, he has reported to his duty on 22nd February, 1988. With effect from 25-1-1989, he has not attended his duty.

5) The petitioner has complied with the interim order passed by this Court directing the respondents to report to their duties. However, except the respondent No.2, who was subsequently absorbed as Telephone Operator with effect from 22-3-1994, otehrs have not turned up even after having once reported. Neither the respondents nor their Advocate have remained present in the Court when the matter was called out.

6) In this view of the matter, nothing further is required to be done by the petitioner as far as the impugned order of the Labour Court is concerned. As far as the order regarding reinstatement of the respondents are concerned, the same was complied with by the petitioner and as far as the back wages are concerned, no order was passed by this Court at the interim stage and even the respondents have not pursued this claim before this Court. Even after reporting to their duties, the respondents have not turned up either because they have joined elsewhere or they have given up their claim. The petitioner has alleged that the respondents were gainfully employed during the period of their termination. It is further contended before the Labour Court that on behalf of the five respondents only one witness, namely, Shri Kishor Hiralal was examined and on that basis the Labour Court has passed the order with regard to the back wages. Sicne this Court has not passed any order with regard to back wages and since the respondents have not remained present and since this Court has not found any merit or substance in the order of the Labour Court with regard to back wages, the order regarding back wages is not sustainable and deserves to be quashed and set aside.

7) It is made clear that this order is passed in

absence of the respondents, if anything contrary to the facts placed on record by the petitioner at the time of hearing of this petition, is found by any of the respondents, the same may be placed on record and liberty is granted to the respondents to move appropriate application, befoer this Court seeking clarification in the order.

With these observations the petition is disposed of and Rule is made absolute to the above extent with no order as to costs.

(K.A.Puj, J.)

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